ATTORNEY FOR APPELLANT:

LORRAINE L. RODTS
Special Assistant to the Public Defender
Bloomington, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JUSTIN F. ROEBEL
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

STEPHANIE J. PARMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 51A01-0702-CR-80
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARTIN CIRCUIT COURT
The Honorable R. Joseph Howell, Judge
Cause No. 51C01-0211-FC-203 & Cause No. 51C01-0211-FD-204

October 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Stephanie J. Parman ("Parman") appeals the sentence imposed upon her pleas of guilty to Operating a Vehicle with a Controlled Substance in Blood Causing Death, a Class C felony,[1] and Operating a Vehicle with a Controlled Substance in Blood Causing Serious Bodily Injury, a Class D felony.[2] We affirm.

Issue

Parman presents three issues for review, which we consolidate and restate as the following issue: whether Parman was properly sentenced.

Facts and Procedural History

In the early afternoon of August 5, 2002, Parman was driving on State Road 231 south of Loogootee when her vehicle collided with a vehicle driven by Carol Emmons. Emmons was severely injured. Cynthia Burris, a passenger in Parman's vehicle, sustained fatal injuries. Parman's blood was tested, with a positive result for opiates and benzodiazepines.

On November 6, 2002, the State charged Parman with Reckless Homicide, a Class C felony,[3] (Cause No. 51C01-0211-FC-202), Operating a Vehicle with a Controlled Substance in Blood Causing Death (Cause No. 51C01-0211-FC-203), Operating a Vehicle with a Controlled Substance in Blood Causing Serious Bodily Injury (Cause No. 51C01-0211-FC-204), and Operating a Vehicle with a Controlled Substance in the Blood, a Class C misdemeanor[4] (Cause No. 51C01-0211-CM-323). On March 29, 2005, Parman pled guilty to

[1] Ind. Code § 9-30-5-5(a)(2).
[2] Ind. Code § 9-30-5-4(a)(2).
[3] Ind. Code § 35-42-1-5.
[4] Ind. Code § 9-30-5-1(c).

Operating a Vehicle with a Controlled Substance in the Blood Causing Death and Operating a Vehicle with a Controlled Substance in the Blood Causing Serious Bodily Injury.

The State agreed to dismiss the remaining two charges and recommend that the executed portion of Parman's sentence not exceed eight years. For the Class D felony, the State agreed to recommend a three-year sentence, suspended in its entirety to probation. The plea agreement provided that Parman's sentences would be consecutive.

A sentencing hearing was conducted on July 31, 2006. Parman waived her right to be present for the pronouncement of her sentence. On November 14, 2006, the trial court issued a written sentencing order providing that Parman should be incarcerated for eight years for Operating a Vehicle with a Controlled Substance in the Blood Causing Death, and three years for Operating a Vehicle With a Controlled Substance in the Blood Causing Serious Bodily Injury. The three-year sentence was suspended to probation.

On December 13, 2006, Parman filed her notice of appeal under Cause No. 51C01-0211-FC-0203. On March 6, 2007, Parman was granted permission to file a belated notice of appeal under Cause No. 51C01-0211-FC-0204. On March 8, 2007, Parman filed her belated notice of appeal. On March 30, 2007, this Court consolidated the appeals.

Discussion and Decision

Parman now contends that she should have received a sentence below the maximum sentence of eight years for a Class C felony. She argues that the trial court failed to give due weight to the mitigating circumstance of her guilty plea and considered improper aggravating circumstances.

At the time of Parman's offenses, Indiana Code Section 35-50-2-6 provided that a person who committed a Class C felony should be imprisoned for a fixed term of four (4) years, with not more than four (4) years added for aggravating circumstances and not more than two (2) years subtracted for mitigating circumstances. Indiana Code Section 35-50-2-7 provided that a person who committed a Class D felony should be imprisoned for a fixed term of one and one-half years, with not more than one and one-half years added for aggravating circumstances and not more than one (1) year subtracted for mitigating circumstances.

In sentencing Parman, the trial court found no mitigators and found as aggravators: Parman had a criminal history, she was released on bond for a federal offense at the time of the instant offenses, she violated the conditions of probation, she had three notices of violation filed while this cause was pending, her federal probation was revoked twice after the pleas of guilty to the instant offenses, imposition of a reduced sentence would depreciate the seriousness of the crime, the crime was directed to the public at large, and the Parman was in a position of trust with the decedent.

Guilty Plea as Mitigator

Parman contends that she was entitled to have her sentence mitigated due to her decision to plead guilty. In sentencing Parman, the trial court observed that Parman had received "substantial consideration from the State of Indiana" and refused to give additional mitigating weight to the decision to plead guilty. (App. 172.)

Indiana courts have recognized that a guilty plea is a significant mitigating factor in

some circumstances because it saves judicial resources and spares the victim from a lengthy trial. Ruiz v. State, 818 N.E.2d 927, 929 (Ind. 2004). Where the State reaps a substantial benefit from the defendant's act of pleading guilty, the defendant deserves to have a substantial benefit returned. Sensback v. State, 720 N.E.2d 1160, 1164 (Ind. 1999). However, a guilty plea is not automatically a significant mitigating factor. Id. at 1165.

Parman argues, and the State concedes, that Parman did not reap a benefit from the dismissal of two charges. Double Jeopardy principles would not permit convictions and sentences for all four charged offenses. Operating a Vehicle with a Controlled Substance in Blood, a Class C misdemeanor, is a lesser-included offense of Operating a Vehicle with a Controlled Substance in Blood Causing Death and Operating a Vehicle with a Controlled Substance in Blood Causing Serious Bodily Injury. Sentences for both the greater and lesser offenses would be improper. See Ballinger v. State, 717 N.E.2d 939, 944-45 (Ind. Ct. App. 1999). Too, Parman could not be convicted of and sentenced for both Reckless Homicide and Operating a Vehicle with a Controlled Substance in Blood Causing Death, because only one conviction and sentence is permissible for a single death. See Radick v. State, 863 N.E.2d 356, 362 (Ind. Ct. App. 2007).

However, the record demonstrates Parman's plea agreement with the State provided for a maximum executed sentence of eight years, as opposed to the eleven-year executed sentence she potentially faced. Because Parman reaped a substantial benefit from her decision to plead guilty, the trial court did not abuse its discretion by failing to accord Parman's guilty plea additional mitigating weight at sentencing.

Parman also points out that she expressed great remorse. However, we accept the trial court's determination of remorse, as this is a matter akin to the determination of credibility. The trial court, unlike this Court, "has the ability to directly observe the defendant and listen to the tenor of his or her voice." Corralez v. State, 815 N.E.2d 1023, 1025 (Ind. Ct. App. 2004).

Alleged Blakely Violation

Parman claims that the trial court's finding of the aggravators, with the exception of her criminal history, probation violations, and commission of crime while released on bond, is in violation of her Sixth Amendment right to have a jury determine whether or not there existed aggravating circumstances to support her sentence enhancement, according to Blakely v. Washington, 542 U.S. 296 (2004). The Blakely Court applied the rule set forth in Apprendi v. New Jersey, 530 U.S. 466, 490 (2000), that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt." The Blakely Court defined the relevant statutory maximum for Apprendi purposes as "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant."

In Smylie v. State, our Supreme Court applied Blakely to invalidate portions of Indiana's sentencing scheme that allowed a trial court, without the aid of a jury or a waiver by the defendant, to enhance a sentence where certain factors were present. 823 N.E.2d 679 (Ind. 2005), cert. denied, 546 U.S. 976 (2005). Our Indiana Supreme Court has determined

that a sentence may be enhanced upon facts that "are established in one of several ways: 1) as a fact of prior conviction; 2) by a jury beyond a reasonable doubt; 3) when admitted by a defendant; and 4) in the course of a guilty plea where the defendant has waived Apprendi rights and stipulated to certain facts or consented to judicial factfinding." Trusley v. State, 829 N.E.2d 923, 925 (Ind. 2005). As such, Parman correctly contends that the aggravators found by the trial court, other than her criminal history and circumstances derivative of that criminal history, are not Blakely-permissible.

In a case where a trial court has relied on some Blakely-permissible aggravators and others that are not, the "sentence may still be upheld if there are other valid aggravating factors from which we can discern that the trial court would have imposed the same sentence." Edwards v. State, 822 N.E.2d 1106, 1110 (Ind. Ct. App. 2005). Here, we are confident that the trial court would have imposed the eight-year sentence based upon Parman's criminal history, failure to comply with conditions of bond, and repeated probation violations, without any additional findings.

Appropriateness of Sentence

Parman also argues that her sentence is inappropriate in light of her character and the nature of the offenses. In particular, she points out that she lacks a lengthy criminal history and took responsibility for her actions by pleading guilty.

Indiana Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender."

The nature of the instant offenses does not independently suggest that a deviation from the presumptive sentence would be appropriate.[5] On the other hand, the character of the offender is such that prior rehabilitative efforts and attempts at leniency have consistently failed. Parman acquired a firearm through making a false statement and was convicted in federal court for that offense. At the sentencing hearing in this case, she testified that she had intended to trade that firearm for drugs. She was granted federal probation, but repeatedly violated the terms of her probation by using drugs. Her probation was twice revoked, and she went to jail for a three-month period and a ten-month period. She was released on probation when she committed the instant offenses. She continued to use drugs afterward. We do not find that Parman's eleven-year aggregate sentence, with three years suspended to probation, is inappropriate.

Consecutive Sentences

Finally, Parman argues that the trial court was constrained to limit the terms of her consecutive sentences to the presumptive (now advisory) terms because of the language of Indiana Code Section 35-50-2-1.3(c) requiring courts to "use the consecutive advisory sentence when a consecutive term of imprisonment is imposed." However, our Supreme Court has rejected this argument in Robertson v. State, 871 N.E.2d 280, 285 (Ind. 2007), stating, "[w]e do not agree that subsection 1.3(c) represents a general requirement that a consecutive sentence be for the advisory term." The Court found that the Legislature did not intend to alter the maximum sentence for an episode or a repeat offender when it substituted

[5] Under the presumptive sentencing scheme, our General Assembly determined that the presumptive sentence was meant to be the starting point selected as an appropriate sentence for the standard crime by the standard

"advisory" for "presumptive" in the existing consecutive sentencing statute. Id.

Conclusion

Parman has not persuaded us that her sentence is inappropriate, nor has she otherwise demonstrated sentencing error.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.

---

criminal. Bennett v. State, 787 N.E.2d 938, 949 (Ind. Ct. App. 2003), trans. denied.